Lou Reiter makes this clear in both his Preliminary and Supplemental Reports. Mr. Reiter's opinion in this regard is as follows:

> Officer Lee's use of deadly force in the fatal shooting of Charles Craighead was objectively unreasonable and contrary to generally accepted police practices in light of the specifics of this incident and the specific knowledge Officer Lee had regarding the presence of an innocent victim. In my opinion, it would have been clear to a reasonable police officer in Officer Lee's position and armed with his specific knowledge of the unfolding events that the use of deadly force would have been unreasonable.[2]

In also concluding that the shooting was objectively unreasonable, D. P. Van Blaricom notes, *inter alia:*

- The shooter (Lee) should have known that one of the two men struggling over the handgun was an innocent victim.
- The handgun was never pointed or aimed at the shooter or anyone else.
- The shooter failed to ascertain who was the suspect and who was the victim.
- The two men were *"right tight against each other";*

---

[2] As well as discussing the many factual disputes between Lee's version and that of the many eye witnesses, Reiter notes that Lee's claim as to what exactly Craighead did that made him feel threatened, putting the gun down in the dumpster then picking it back up and pointing it at Lee, simply defies common sense. Reiter states: "...it would be illogical for Mr. Craighead to maneuver the handgun as described by Officer Lee....(h)e was fighting to keep it away from his assailant. With the arrival of the police it would have been more appropriate for him to have discarded it into the dumpster or continued to hold onto it as described by Ms. Price and Ms. McDougle." A jury could certainly make the same reasonable inference.

- (Given Lee's use of a shotgun at the range he fired it) the shooter elected to shoot both the suspect and his victim, whomever either might be, without any discrimination whatsoever for who was going to be seriously injured and/or killed.

II. The Decisions Below.

Both the Eighth Circuit Court of Appeals and the District Court adhered strictly to this Court's qualified immunity jurisprudence and performed a thorough and proper analysis. Both courts found that genuine issues of material fact as to whether deadly force was unreasonable preclude summary judgment for the Petitioner. Both courts rejected the argument advanced by the officer's lawyers, an argument contradicted by their own client, that Lee shot Craighead to protect Scott, a third party. Respondents' evidence showed that Lee knowingly and intentionally shot both men. Both courts came to the common sense conclusion that a police officer does not protect someone by intentionally shooting them.

The district court applied the two part qualified immunity analysis given in *Saucier v. Katz,* 533 U.S. 194, 201 (2001). In answering the first question, the court applied the correct substantive law to determine the reasonableness of deadly force: *Graham v. Connor,* 490 U.S. 386 (1989) and *Tennessee v. Garner,* 471 U.S. 1 (1985). The district court carefully analyzed all the factors specified in *Graham* and *Garner.* Recognizing that the evidence was disputed but properly viewing the evidence in the light most favorable to the nonmoving party, the court denied the defendants' motion for summary judgment. The District Court held that "(w)hile appreciating that 'police officers are often forced to make split second judgments in volatile, uncertain circumstances, and that the record may well develop differently at trial, presently genuine issues of fact exist as to whether a reasonable officer in Lee's position would 'have believed his

actions to be lawful.'" *Craighead v. Lee,* 2004 WL 190290 at 4 (D.Minn. 2004) (citations omitted).

Contrary to petitioner's oft repeated claim, the district court never determined the unreasonableness of the force used against Craighead based upon a threat posed to a third party. The district court only acknowledged the risk that Lee's shooting both men posed to Scott in rejecting the defendant's ludicrous argument that Lee shot Scott to protect him from Craighead. The district court stated "...it is significant that Defendants' assertion that Lee was protecting the unarmed man is contradicted by Lee firing a shot gun at two intertwined persons where either could have easily been hit, and in fact both were." *Craighead v. Lee,* 2004 WL 190290 at 6 (D.Minn. 2004).

The petitioner also distorts both the analysis and reasoning of the Eighth Circuit's opinion affirming the district court. The court began its analysis by extensively discussing both the undisputed and the many disputed facts. *Craighead v. Lee,* 399 F.3d 954, 958-60 (8th Cir. 2005). The court properly adopted the district court's view of the facts in the light most favorable to the plaintiffs' version. *Id.* at 960-61. The facts included the following:

> ...Craighead held the gun over his head, pointed upward, throughout the struggle with Scott; Lee knew that only one black male was suspected in the earlier crimes; Lee knew that one of the two men before him was most likely a victim; and Lee exited his squad car and fired his shotgun within three seconds, without issuing any warnings or commands, under circumstances in which a trained shooter would have known that the shot would hit both men.

Id. at 960. Additional facts were as follows:

> Lee in a continuous sequence exited the squad car, aimed his shotgun at the two men wrestling, and fired

> without warning, within approximately three seconds, while Craighead was holding the gun overhead, pointed upward. A trained shooter, such as Lee, would have known that under the circumstances the shot would hit both men, including the one that Lee had to presume was a victim rather than a suspect. Furthermore, the facts, taken in the light most favorable to Craighead's heirs and next of kin, show that Lee either was still in his car or had his pack set on when the dispatcher broadcast the news that the gun had changed hands. It would be objectively unreasonable for a police officer to fire a shotgun under such circumstances.

Id. at 961-62.

As did the district court, the Eighth Circuit applied the two part qualified immunity test of *Saucier*. In answering the first question, that court properly analyzed these facts under the objective reasonableness standard of *Graham* and *Garner*. The court did not engage in any hindsight analysis but analyzed the reasonableness of the use of deadly force under the totality of circumstances confronting the officer at the time of the shooting. *Craighead*, 399 F.3d at 961. On the plaintiffs' facts, the court of appeals had "*no hesitancy* in saying that the facts alleged...show that Lee's use of deadly force was objectively unreasonable." *Id.* (emphasis supplied).

In answering the second *Saucier* question, the court of appeals noted that "(a)t least since *Garner* was decided nearly 20 years ago, officers have been on notice that they may not use deadly force unless the suspect poses a significant threat of death or serious physical injury to the officer or others." *Id.* at 962. The court also noted that before the date of the incident it had denied qualified immunity "in at least four cases in which the plaintiff presented evidence to show that the officer used deadly force under circumstances in which the officer should have known that the person did not

present an immediate threat of serious physical injury or death." *Id.* (citations omitted). The court concluded that these cases, "along with *Garner,* put officers on notice before December 3, 2001 that they may not use deadly force under circumstances in which they should know that the suspect does not present an immediate threat of serious physical injury or harm." *Id.* at 963. The court therefore held that "Craighead's right not to be seized by deadly force was clearly established with sufficient specificity to meet the second prong of *Saucier.*" *Id.*

Petitioner erroneously argues that "the court of appeals ruled the use of deadly force unjustified, errantly based, again, on the risk of harm to another." (See Petition at p. 11). The risk Lee posed to Scott was not part of any analysis on whether the use of deadly force against Craighead was unreasonable or not. The risk to Scott is only discussed to refute the defendant's argument that Lee shot Craighead to protect Scott. As the court noted: "(e)ven if Lee thought that Craighead posed a significant threat of death or serious physical injury to Scott, the facts we are required to assume show that Lee fired the shotgun in circumstances in which he knew or should have known that he would hit both Craighead and Scott, so he cannot have fired the shot to protect Scott." *Id.* at 962. Having raised the silly argument, the Petitioner can hardly complain about the common sense used by the court of appeals to reject it.

Petitioner also chooses to ignore what both the district court and the court of appeals found to be clear: under the plaintiffs' facts Craighead did not pose an immediate threat to anyone. Under the plaintiffs' evidence, Lee never had a "reasonable but mistaken belief" that Craighead was Scott, the perpetrator of the earlier shootings, when Craighead's actions and the information Lee received from dispatch showed that he was an innocent victim. The Petitioner would have had the courts below begin their analysis based on a

"reasonable belief" that, under the plaintiffs' evidence, never existed. Both the district court and the court of appeals properly rejected this invitation. Instead, both courts found that the many disputes on issues of material fact made summary judgment on qualified immunity grounds wholly inappropriate. As the court of appeals held: "(t)his is a classic example of a case that should be decided by trial rather than by summary judgment." *Id.* at 963-64.

REASONS FOR DENYING PETITION

I. The case involves a classic factual dispute and not an issue of any constitutional importance.

The opinions of the experienced jurists below could not be clearer: this case presents a classic dispute of material facts that should be resolved by a jury, not by summary judgment. In a desperate attempt to keep this case from a jury, the Petitioner deliberately ignores and obfuscates the simple and straightforward nature of this case.

Under the plaintiffs' evidence, Craighead was not posing an immediate threat to anyone when he was shot. Contradicting his own experts, Lee admitted at his deposition that a warning was feasible even though Craighead was holding a gun above his head pointed towards the sky. In fact, Lee claims he gave several commands to Craighead to drop the gun, drop the gun, drop the gun. According to Lee, it was not until Craighead put the gun down in the dumpster, picked it back up, and pointed it at Lee that the officer believed that deadly force was appropriate.

Under the plaintiffs' evidence, the events upon which Lee's justification of his use of deadly force depends never happened. Plaintiffs' evidence also shows that Lee never gave any warning before he fired even though he admits it was feasible.

In asking this court to accept his Petition, Petitioner deliberately ignores the factual disputes that are at the heart of this case. His claim that Lee fired his shotgun to protect the "other man" who appeared to be "fighting for his life" with Craighead is pure fiction. (See Petition at 2, 6).

Further, Lee himself controverts and rebuts his experts to the extent they suggest that holding a gun in and of itself creates an immediate threat of death or great bodily harm. Lee did not perceive that the two men struggling intertwined with one holding a gun high above his head pointed towards the sky posed such a threat. According to Lee, the threat did not materialize until Craighead put the gun in the dumpster, picked it up again, and pointed it at Lee: events Craighead's witnesses establish never happened.

The issue in this case is purely factual. While this case certainly has great importance to the parties, it does not involve any issues of great constitutional or other importance. The case certainly does not involve issues that merit any expenditure of the United States Supreme Court's extremely valuable, but extremely limited, time and judicial resources. The Petition should be denied.

II. The Eighth Circuit's decision does not create any conflict between the circuits on any issue of importance.

Petitioner constructs a straw man when he argues that the Eighth Circuit based its decision on the so-called "risk-to-another" factor. (See Petition pp. 12- 17). Even a cursory reading of the opinion reveals that nothing could be further from the truth. The only right considered or discussed by the Eighth Circuit was Craighead's right to be free from an unreasonable use of deadly force against him. Far from being an "essential element," whether Lee posed a risk to another did not factor at all into the court of appeals' decision that Lee was not entitled to qualified immunity.

Petitioner below made the ludicrous argument that Lee shot Scott to protect him. The court of appeals simply recognized this when it noted that "Lee fired the shotgun in circumstances in which he knew or should have known that he would hit both Craighead and Scott, **so he cannot have fired the shot to protect Scott.**" *Craighead,* 399 F.3d at 962. (emphasis supplied).

This sound exercise of logic and common sense does not create a split amongst the circuits. *Howerton v. Fletcher,* 213 F.3d 171 (4th Cir. 2000), the case most heavily relied upon by Petitioner, is completely different from this case. *Howerton* was a jury instruction case in which the plaintiff argued that, in considering the "totality of the circumstances" to decide whether deadly force was unreasonable under *Garner,* the trial court erred in instructing the jury that they should not consider the risk to bystanders. The issue arose after the jury, during deliberations, inquired whether they could consider this factor. *Howerton,* 213 F.3d at 171.

This case is entirely different in terms of the procedural posture, the issue under consideration, and the arguments of the plaintiffs. This case is in the summary judgment stage. The issue in this case is not the propriety of a jury instruction, but whether a police officer is entitled to qualified immunity as a matter of law.

Most significantly, respondents have never argued that the unreasonableness of Lee's use of deadly force against Craighead is based on any infringement of or threat to Scott's rights. Craighead's rights were violated because Lee shot and killed him when he was not posing an immediate threat of harm to anyone and when Lee could have given a warning before firing but failed to do so. In no way do the respondents seek to rely offensively on the risk of harm to third persons in proving that Lee's use of deadly force was unreasonable.

The court of appeals' decision does not include any discussion of *Howerton* because it is so clearly inapplicable to this case. Absent from the court's opinion is any discussion suggesting that whether Craighead posed an immediate threat of death or great bodily harm to anyone, or whether a warning was feasible but not given was in anyway dependent on a threat to a third party.

The case was decided based on the infringement of Craighead's rights alone. The Eighth Circuit's decision did not create a split with the Fourth Circuit or any of the other circuits included in the string cite listed in the Petition. (See Petition pp. 13-14). The Petition should therefore be denied.

III. The Eighth Circuit's decision is faithful to and in accord with this Court's precedent that a police officer is not entitled to summary judgment on qualified immunity grounds when Respondent's evidence shows that the officer used deadly force against a victim who was not posing an immediate threat of death or great bodily harm to anyone and where it was feasible for the officer to give a warning before using deadly force but he failed to do so.

The Eighth Circuit's decision is a textbook example of the proper application of this Court's qualified immunity test. The Petitioner's argument that it is not is a textbook example of mischaracterization and hyperbole. The Petitioner would have this court completely rewrite its test as to when the law is "clearly established" by requiring factually identical precedent. This court has consistently refused to adopt such a radical standard, a standard that would result in practical absolute immunity in many cases. This court should reject Petitioner's dangerous invitation and deny the Petition.

The court of appeals faithfully followed *Hope v. Pelzer*, 536 U.S. 730 (2002). Citing *Hope*, the Eighth Circuit noted that "officials can still be on notice that their conduct violates clearly established law even in novel factual

circumstances." *Craighead,* 399 F.3d at 962. The court correctly framed the "clearly established" issue as "not whether prior cases present facts substantially similar to the present case but whether prior cases would have put a reasonable officer on notice that the use of deadly force in these circumstances would violate Craighead's right not to be seized by the use of excessive force." *Id.*

The Eighth Circuit looked not only to *Garner* but also to five of its cases decided before the date of the incident which together, the court held, "put officers on notice before December 3, 2001, that they may not use deadly force under circumstances in which they should know that the suspect does not present an immediate threat of serious physical injury or harm." *Craighead,* 399 F.3d at 963, citing *Ribbey v. Cox,* 222 F.3d 1040 (8th Cir. 2000); *McCaslin v. Wilkins,* 183 F.3d 775 (8th Cir. 1999); *Woolfolk v. Smith,* 81 F.3d 741 (8th Cir. 1996); *Ludwig v. Anderson,* 54 F.3d 465 (8th Cir. 1995); and *Gardner v. Buerger,* 82 F.3d 248 (8th Cir. 1996). Because, under the plaintiffs' facts Craighead was not posing an immediate threat of serious injury or harm to anyone when he was shot, the Eighth Circuit correctly held that "Craighead's right not to be seized by deadly force was clearly established with sufficient particularity to meet the second prong of *Saucier.*" *Craighead,* 399 F.3d at 963.

Petitioner chooses to ignore the finding of two courts that Craighead did not pose a threat to anyone when he was shot. This finding is based on the totality of the circumstances viewed in the light most favorable to the Respondents. The circumstances include that the gun was always pointed upward, that Craighead was clearly trying to keep it away from the shorter Scott, and that Lee would have heard the broadcast that the gun had changed hands before he fired. See *Craighead,* 399 F.3d at 960-63. Petitioner ignores the factual basis for the court's decision and chooses instead to reargue the facts when he asserts that Craighead was in the

act of committing an armed assault and that Lee was in hot pursuit of a fleeing felon. (See Petition p. 23). Craighead was not committing an armed assault and Lee was never in "hot pursuit." The record does not contain any such factual findings.

Petitioner is also simply wrong when he argues that the Eighth Circuit's decision is inconsistent with *Brosseau v. Haugen,* 125 S.Ct. 596 (2004). Unlike this case, *Brosseau* was not a case where a police officer shot a person who was not posing an immediate threat of death or bodily harm. To the contrary, in that case there was no dispute that the plaintiff was a disturbed felon, set on avoiding capture through vehicular flight, whose flight posed a danger to the safety of persons in the immediate area. *Brosseau,* 125 S.Ct. at 600. Given these circumstances, this Court held that it was not clearly established that the officer's conduct violated the fourth amendment. *Brosseau,* 125 S.Ct. 600.

In contrast, here the law was clearly established that the officer's conduct violated the fourth amendment under the facts of this case. This is a much, much clearer case than was *Brosseau*. Craighead did not flee. He was not a disturbed felon. Plaintiffs' evidence showed that the officer would have known before he shot him that Craighead was a victim as the gun had changed hands. Craighead did not pose an immediate danger to anyone's safety. Further, though it was feasible for Lee to give a warning, he chose instead to shoot first and ask questions later. Case law did "clearly establish" that such conduct violated the Fourth Amendment.

Petitioner effectively suggests a radical departure from *Garner* and established use of deadly force law. He would have this Court rule that the fact that someone is holding a gun in and of itself permits law enforcement to use deadly force against that person. Holding a gun may or may not be an imminent threat depending on the totality of the circumstances. *Garner* authorizes deadly force when "the

suspect **threatens** the officer with a weapon." *Garner*, 471 U.S. at 12 (emphasis supplied). Changing this rule from "threatened with a weapon" to "holding a weapon" as petitioner suggests would lead to a dramatic increase in the loss of life, including innocent lives. Both courts below rightly rejected this dangerous and radical argument. This court should do the same by denying the Petition for Certiorari.

CONCLUSION

This case involves a classic factual dispute which should be decided by a jury. Both courts below recognized this. The United States Supreme Court should not expend its valuable and limited judicial resources on a case that involves only a factual dispute, that does not involve a circuit split or important question of law, and that involves a court of appeals decision that is faithful to this Court's applicable precedent. The Petition for Writ of Certiorari should therefore be denied.

Respectfully submitted,

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JUL 18 2005

No. 04-1695

In the Supreme Court of the United States

Michael A. Lee,

Petitioner,

v.

Shenita Craighead and Sherell Craighead as Co-Trustees for the Heirs and Next-of-Kin of Charles Craighead, Deceased,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MOTION FOR LEAVE TO FILE AMICUS CURIAE; AND BRIEF OF AMICUS CURIAE OF THE MINNESOTA POLICE AND PEACE OFFICERS ASSOCIATION LEGAL DEFENSE FUND AND LAW ENFORCEMENT LABOR SERVICES, INC., IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether qualified immunity may be denied under the reasonableness requirement of the Fourth Amendment based upon potential harm to third parties?

2. Whether there is a violation of a clearly established right when a police officer pursing an armed felon encounters the suspect with his next victim and shoots the man with the gun?

PARTIES TO THE PROCEEDING

The parties to the proceedings below were:

Petitioner Michael A. Lee is a City of St. Paul police officer who was a defendant/appellant in the Eighth Circuit. The City of St. Paul was also named as a defendant on both of the federal and state law claims but the 42 U.S.C. § 1983 claim of municipal liability was dismissed. Therefore, the City of St. Paul is not a party to this action.

Respondents Shenita Craighead and Sherell Craighead are co-trustees for the heirs and next-of-kin of Charles Craighead, deceased, and were plaintiffs/appellees below.

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INTEREST OF AMICUS CURIAE[1]

Pursuant to Supreme Court Rule 37.3, the Minnesota Police and Peace Officers Association Legal Defense Fund (MPPOA LDF) and Law Enforcement Labor Services, Inc., (LELS) respectfully move for leave to file the accompanying amicus curiae brief in support of the Petitioner. Counsel for Petitioner have consented to this brief, but counsel for Respondents have withheld consent.

Amicus Curiae MPPOA LDF and LELS submit this brief in support of Petitioner. The Amicus Curiae seeks United States Supreme Court review of the Eighth Circuit Court of Appeals' decision in *Craighead v. Lee,* denying Petitioner's motion for summary judgment on qualified immunity grounds. MPPOA LDF and LELS are interested in this case because the opinion of the Eighth Circuit creates an unacceptable precedent regarding police officers' qualified immunity in Fourth Amendment, excessive force cases.

MPPOA was founded in 1922 and is the largest association representing police officers in Minnesota. Its members consist of municipal police officers, county deputy sheriffs, state troopers, and peace officers employed by the state of Minnesota. MPPOA has established itself as a powerful, effective and respected voice for its members. One of MPPOA's objectives is to promote sound development and administration of law. MPPOA LDF provides legal coverage for its 6,767 members when they are the target of a criminal investigation or defendants in a civil action arising from the course and scope of their duties as police officers.

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[1] Pursuant to Supreme Court Rule 37, no counsel for any party in this case authored this amicus curiae brief in whole or in part, and no person or entity, other than the amicus curiae and its members made a monetary contribution to the preparation or submission of the brief. The Petitioner has consented to this brief and copy of this consent has been filed with the Clerk of Court.

LELS is Minnesota's labor union dedicated to representing law enforcement personnel employed throughout the state of Minnesota. LELS has members employed in 189 police agencies. LELS is responsible for contract negotiations, grievance and arbitration presentations, internal affairs representation and representation of unfair labor practices filed in district court.

The Eighth Circuit's decision establishes new law that an armed suspect has a Fourth Amendment right not to be seized with lethal force if the force poses a risk of harm to a third party. This decision denies officers the critical decision to use lethal force when an armed suspect is in immediate proximity to a victim. It is directly contrary to this court's holding in *County of Sacramento v. Lewis,* 523 U.S. 833 (1998) involving high risk police pursuits. The *Craighead* decision subjects officers to unreasonable second-guessing because it fails to afford them protection when making difficult, split-second decisions required in their official duties. This judicial second-guessing interferes with officer effectiveness and will inevitably expose officers and the public to increased danger in a variety of situations. The interest of Amicus arises from the fact the circumstances giving rise to the use of deadly force by Officer Lee in this case are familiar to police officers served by MPPOA LDF and LELS. Clear and consistent case law is necessary to give practical guidance to peace officers and their employers on the use of deadly force in similar circumstances involving third parties in close proximity. Not only is such guidance necessary for proper application of the qualified immunity defense, but such guidance serves to protect the safety of police officers and the community. It protects the interests of police officers in fair and just employment related discipline and potential criminal liability.

In the present case, the Eighth Circuit rendered a decision de-emphasizing the perspective of the police officer who must make the split-second decision whether to employ

deadly force when a third party is in close proximity. Police officers are tasked with protecting the security of the community and preventing harm. Police officers need to know when the threat of harm is sufficiently severe and imminent to warrant the use of deadly force, how to make that assessment in the field when there is a third party nearby and whether a warning is required. Amicus Curiae believes the brief it is requesting permission to file will provide this perspective and demonstrate the need for review of this case to ensure federal case law gives the practical guidance and fair warning police officers need to lawfully perform their duties.

These issues are of vital interest to MPPOA LDF and LELS and its members. Amicus Curiae supports the Petition for Writ of Certiorari. The decision in *Craighead v. Lee,* 399 F.3d 954 (8th Cir. 2005) raises uncertainty concerning the use of deadly force that adversely affects the personal liability and employment relations of the members of MPPOA LDF and LELS. The Eighth Circuit decision creates a split in opinions among the circuits concerning the proper use of deadly force by police officers when a third party is present and thereby subjects police officers to trial due to the denial or uncertainty of the defense of qualified immunity.

For the foregoing reasons, Amicus Curiae requests leave to file its brief.

SUMMARY OF REASONS FOR GRANTING WRIT OF CERTIORARI

The Amicus Curiae adopts and relies upon the factual statement of the Petitioner in their May 19, 2005, Petition for Writ of Certiorari, docketed on June 17, 2005.

Qualified immunity protects law enforcement officers and other public officials from the expense and vexation of litigation. Police officers are often placed in situations where they may be called upon to use force, including deadly force,

in situations where officers must draw their weapons and use them in self-defense or the defense of others. Police officers have a compelling interest in clear and consistent case law on the lawful use of deadly force in circumstances similar to those faced by Officer Lee. It is not uncommon for police officers to face circumstances where a dangerous suspect with a weapon is involved in an altercation with a third party. The Eighth Circuit decision subjects officers to unreasonable second-guessing by courts and juries because it fails to afford police officers protection in making difficult, on-the-scene decisions in inherently dangerous situations.

This second-guessing interferes with police effectiveness and will expose police officers and the public to increased danger in a variety of circumstances. Police officers must be able to assess the situation and determine if deadly force is justified. The *Craighead* panel created a split among the circuits, departed from clear precedent and improperly evaluated whether Mr. Craighead's rights were clearly established. It is necessary for this court to hear this case to guide police officers who must decide whether deadly force may be lawful in similar circumstances and what, if any, warning is necessary.

ARGUMENT

I. Police officers have a compelling interest in clear and consistent case law on the use of deadly force when a third party is in close proximity.

Police officers have a critical interest in clear and consistent case law that gives practical guidance and fair warning on the proper use of deadly force when third parties are nearby. A goal of law enforcement is to secure and protect the community from harm. Police officers must anticipate what a suspect and those in the area will do in dangerous and highly volatile circumstances and be ready to